

## **MUNICIPAL ORDER 22-2022**

**A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF OWENSBORO AND THE HOUSING AUTHORITY OF OWENSBORO BY WHICH THE HOUSING AUTHORITY SHALL MAKE PAYMENT IN LIEU OF AD VALOREM TAXES ON SPECIFIED HOUSING UNITS.**

**WHEREAS**, the Housing Authority of Owensboro owns and manages approximately 248 units of affordable housing in the City of Owensboro, Kentucky; and

**WHEREAS**, the Housing Authority is converting these units of affordable housing under the Rental Assistance Demonstration ("RAD") Program under Section 8 of the Housing Act; and

**WHEREAS**, the Housing Authority will lease the units of affordable housing to Churchill Park, LLLP, in which the Housing Authority will remain a general partner, and the units of housing will continue to be available as a resource for low-income residents of the City of Owensboro; and

**WHEREAS**, the Parties wish to enter into an Agreement requiring the continued payment by the Housing Authority of payments in lieu of ad valorem taxes for the covered units of affordable housing, a copy of which agreement is attached hereto as Exhibit "A" and incorporated by reference.

**NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:**

**Section 1.** That the Mayor be, and hereby is, authorized and directed to execute an Agreement between the City of Owensboro and the Housing Authority of

Owensboro for the purpose of establishing the required payment in lieu of ad valorem taxes for covered units of affordable housing.

**Section 2.** That the Mayor, City Manager and other appropriate staff members are hereby authorized and directed to execute any and all other agreements, instruments, or documents necessary and appropriate to effectuate and implement the intentions of the City of Owensboro and the Housing Authority of Owensboro.

**INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING,** this the 17<sup>th</sup> day of May, 2022.

\_\_\_\_\_  
Thomas H. Watson, Mayor

ATTEST:

\_\_\_\_\_  
Beth Davis, City Clerk

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**AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR  
AD VALOREM TAXES  
BETWEEN  
HOUSING AUTHORITY OF OWENSBORO  
AND  
CITY OF OWENSBORO, KENTUCKY**

**DATED [ ] \_\_\_\_\_, 2022**

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## AGREEMENT FOR PAYMENT IN LIEU OF AD VALOREM TAXES

This **AMENDED AND RESTATED AGREEMENT FOR PAYMENT IN LIEU OF TAXES** for property not subject to ad valorem taxes (this “*PILOT Agreement*”) is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the **Housing Authority of Owensboro**, a municipal Housing Authority, of 2161 East 19<sup>th</sup> Street, Owensboro, Kentucky 42303 (the “*Housing Authority*”) and the **City of Owensboro, Kentucky**, a municipal corporation of the home rule class of 101 East 4<sup>th</sup> Street, P.O. Box 10003, Owensboro, Kentucky 42302-9003 (the “*City*”).

**WHEREAS**, the Housing Authority owns and manages approximately 248 units of affordable housing and related facilities located in the City of Owensboro, Kentucky (the “*Affordable Units*”), which are currently operated and assisted as “public housing” pursuant to the U. S. Housing Act of 1937, 42 U.S.C. 1437-1437z-8 (the “*Housing Act*”); and

**WHEREAS**, the Affordable Units, being public property used for a public purpose, have been recognized as exempt from ad valorem taxes pursuant to Section 170 of the Kentucky Constitution; and

**WHEREAS**, the Housing Authority is converting the Affordable Units under the Rental Assistance Demonstration (“*RAD*”) Program operated by the U. S. Department of Housing and Urban Development (“*HUD*”) under Section 8 of the Housing Act. Under the RAD Program, the Affordable Units must be made available to all current tenants, and must continue to be made available to low-income families as defined by the Housing Act for so long as HUD continues to provide Section 8 assistance, such obligation being reflected in a use agreement recorded in the applicable land records in the Office of the Daviess County, Kentucky Clerk, with priority over all financing (“*RAD Use Agreement*”); and

**WHEREAS**, the Housing Authority proposes to renovate and recapitalize the Affordable Units using tax-exempt bonds and Low-Income Housing Tax Credits (“*LIHTCs*”) administered by the Kentucky Housing Corporation, so as to ensure the long-term availability of the Assisted Units as a resource for low-income residents of the City; requirements of the LIHTC program are evidenced by an extended use agreement recorded in the applicable land records in the Office of the Daviess County, Kentucky Clerk, (the “*LIHTC Covenants*”); and

**WHEREAS**, in order to utilize LIHTCs and raise additional capital, the Housing Authority will lease the Affordable Units under a long-term ground lease (the “*Lease*”) to a limited liability limited partnership, Churchill Park, LLLP, in which the Housing Authority through a related entity (Investing In Communities, Inc.) will serve as the 49% member of the general partner; and

**WHEREAS**, PILOT payments may be used by the City of Owensboro, as recipient, for any governmental purpose; and

**WHEREAS**, PILOT payments are designed to assist local units of government in carrying out vital services such as firefighting, police protection, and the maintenance of roads and bridges; and

**WHEREAS**, the Housing Authority and the City have previously entered into a Cooperation Agreement dated August 30, 1978 wherein the City agreed not to levy or impose any real or personal property taxes or special assessments upon the Affordable Units or the Housing Authority; and

**WHEREAS**, the parties hereto wish to continue their collaboration in order to provide sustainable, high-quality housing affordable to low-income residents of the City.

**NOW, THEREFORE**, the Housing Authority and the City do hereby agree as follows:

1. **Property subject to PILOT Agreement**: The properties subject to this agreement, all of which are owned in fee simple by the Housing Authority, are identified in Exhibit “A” attached hereto.

2. **Exemption**: The parties acknowledge that the operation of the Affordable Units as affordable housing in conformance with the RAD Use Agreement is a public purpose.

3. **PILOT Term**: This PILOT Agreement shall commence on \_\_\_\_\_, the effective date of the Lease, and shall continue for sixty-five (65) years, the term of such Lease; provided, however, that this PILOT Agreement may be sooner terminated at the City’s election in the event of a default under, and the termination of, the RAD Use Agreement, unless the Housing Authority then demonstrates the continued use of the subject property as affordable housing.

4. **Payment in Lieu of Ad Valorem Taxes**: The Housing Authority agrees to pay the City and the City agrees to accept from the Housing Authority annual payments in lieu of ad valorem property taxes in an amount equal to \$173.00 per unit per year. Per unit PILOT annual payment shall be increased in an amount equal to [three percent (3%)], annually, beginning [July 1, 2025]. The parties agree to review this provision fifteen (15) years after the Agreement’s commencement, and every five (5) years thereafter.

5. **Notices**: All notices, consents, requests or other communication by and between the parties shall be reduced to writing and delivered as follows:

Housing Authority of Owensboro  
2161 E 19th Street  
Owensboro, KY 42303

City of Owensboro, Kentucky  
Attention: Mayor  
101 East 4<sup>th</sup> Street, P.O. Box 10003  
Owensboro, Kentucky 42302-9003

With a copy to:

Churchill Park, LLLP  
c/o TCG Development Advisors, LLC  
348 Thompson Creek Mall, Suite 357  
Stevensville, MD 21666  
Attn: Peter Behringer

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other party.

6. **Applicable Law:** This Agreement shall be made and interpreted in accordance with the laws of the Commonwealth of Kentucky and applicable regulations adopted by the HUD, or any successor agency.

**APPROVED** by the City Commission of the City of Owensboro, Kentucky at a meeting held on \_\_\_\_\_, 2022, a quorum present and voting.

This Agreement was approved by the Board of Commissioners of the Housing Authority of Owensboro at a regular meeting held on \_\_\_\_\_, 2022, a quorum present and voting.

**Housing Authority of Owensboro**

**City of Owensboro, Kentucky**

BY: \_\_\_\_\_  
Rita Moorman, Chairperson

BY: \_\_\_\_\_  
Thomas H. Watson, Mayor

PREPARED BY:

\_\_\_\_\_  
Charles J. Kamuf II  
KAMUF, PACE & KAMUF  
221 West Second Street  
Owensboro, Kentucky 42303  
Phone (270) 685-3901

## Exhibit "A"

### Covered Properties

#### Project No. KY 9-3

Beginning at a point in the center line of the Leitchfield Road (Kentucky Highway #54) and the intersection of East 18<sup>th</sup> Street extended; thence along the center line of Leitchfield Road with the chords of a 25 degree curve S 61 degrees 19 minutes E 100.0 ft., S. 86 degrees 19 minutes E. 100.0 ft. and N. 77 degrees 13 minutes E. 31.60 ft.; thence with a tangent N. 73 degrees 15 minutes E. 181.3 ft.; thence with the chords of a 22 degree curve N 84 degrees 15 minutes E 100.0 ft. and S 76 degrees 28 minutes E 77.95 ft.; thence with a tangent S 67 degrees 36 minutes E. 86.50 ft.; thence with the chords of a 4 degree curve S 69 degrees 36 minutes E. 100.0 ft., S 73 degrees 36 minutes E. 100.0 ft., and S 76 degrees 30 minutes E. 45.0 ft.; thence with a tangent S. 77 degrees 24 minutes E. 260.8 ft.; thence with the chords of a 7 degree 30 minute curve S 73 degrees 39 minutes E. 100.0 ft., S 66 degrees 09 minutes E. 100.0 ft.; thence with a tangent S 62 degrees 14 minutes E. 19.22 ft.; thence with the chords of a 12 degree curve S. 56 degrees 51 minutes E. 89.30 ft.; thence with a tangent S. 51 degrees 31 minutes E. 107.30 ft.; thence with the chords of a 17 degree curve S. 60 degrees 01 minutes E. 100.0 ft. and S. 64 degrees 29 minutes E. 5.10 ft. to a point in the center of said road and corner with Rommie Westerfield; thence S. 46 degrees 31 minutes W. 1381.77 ft. to a stake, corner with Westerfield in Paul Welsh's line; thence N. 39 degrees 09 minutes W. 551.01 ft. to a stake, corner with Welsh; thence N. 87 degrees 31 minutes W. 122.63 ft. to a stake in the east margin of Oak Avenue (this line being the city limits line); thence N. 21 degrees 50 minutes W. 699.85 ft. to a stake corner with Oak Avenue; thence N. 33 degrees 43 minutes W 53.40 ft. to a stake corner with Oak Avenue; thence N. 54 degrees 01 minutes W. 68.32 ft. to a stake in the east margin of Oak Avenue and E. 18<sup>th</sup> Street; thence with East 18<sup>th</sup> Street N. 35 degrees 30 minutes W. 141.0 ft. to a stake corner with Home Oil & Gas Company; thence S. 38 degrees 47 minutes E. 115.50 ft. to a stake corner with Home Oil & Gas; thence N. 51 degrees 42 minutes E. 138.60 ft. to a stake corner with Home Oil & Gas; thence N 38 degrees 13 minutes W. 107.50 ft. to a point in center of E. 18<sup>th</sup> Street extended; thence with said street N. 87 degrees 55 minutes E. 32.13 ft. to the point of beginning and containing 31.22 acres, more or less.

There is an easement across this property held by the Kentucky Utilities Company sixty feet in width, or thirty feet on each side of the center line along which their power lines are erected across the Leibfried property bounded as follows to-wit:

Beginning at a point in the SE property line approximately 526 feet NE of the SW corner; thence N. 23 degrees 48 minutes W 850.5 feet to a point in the North boundary line, center of Leitchfield Road; thence N 84 degrees 15 minutes E 60 feet and S 76 degrees 28 minutes E 5 feet to a point in center of said road; thence S 23 degrees 48 minutes E 807 feet to a point in SE property line; thence S 45 degrees 31 minutes W 60 feet and S 43 degrees 44 minutes W 3 feet to the point of beginning and containing 1.14 acres more or less.

The Kentucky Utilities Company easement also extends across the Mosely property, but inasmuch as this property was in litigation until just recently the easement across this property was not incorporated in a recent agreement entered into between the local Authority and the Kentucky Utilities Company reducing the width of their right-of-way, and this easement, therefore, is 150 feet wide, or 75 feet on each side of the center line, bounded as follows: beginning at a point in SE

property line approximately 393 feet NE of the SW corner; thence N 23 degrees 48 minutes W 301 feet to a point in the NW property line; thence N 43 degrees 44 minutes E 51 feet and N 45 degrees 31 minutes W 109 feet along the Leibfried line to a point in the NW property line; thence S 23 degrees 48 minutes E 306 feet to a point in the SE property line; thence S 46 degrees 31 minutes W 159.33 feet to the point of beginning and containing 1.05 acres, more or less.

THERE IS EXCEPTED FROM THE ABOVE PROPERTY, THE FOLLOWING TWO TRACTS OF LAND CONVEYED BY THE HOUSING AUTHORITY OF OWENSBORO TO BAKER PLACE, LLC BY DEED DATED JUNE 1, 2021 AND WHICH IS OF RECORD IN DEED BOOK 1046, PAGE 712, OFFICE OF THE DAVIESS COUNTY CLERK.

**Project No. 9-5**

**1.904 acres:**

A certain tract of land being located at 2136 Baker Avenue in Owensboro, Daviess County, Kentucky and being more particularly described as follows:

Unless stated otherwise any monument referred to herein as an "iron pin set" is a 5/8-inch steel reinforcement bar, eighteen (18) inches in length, with a plastic cap embossed "J.W. Weikel, KY PS 2813".

Beginning at an iron pin set being in the southwest right-of-way line of Leitchfield Road, said southwest right-of-way line being 30.00 feet from its centerline and being the easternmost corner of the City of Owensboro Housing Authority property, as shown on the Property Valuation Maps for Daviess County, Kentucky as Parcel 3-05-04-11; thence with said southwest right-of-way line for the following three (3) calls:

1. South 57 degrees 15 minutes 18 seconds East, a distance of 54.68 feet to an iron pin set;

2. in a curve to the right being subtended by a chord of South 53 degrees 37 minutes 48 seconds East, a chord distance of 8.85 feet and having a radius of 70.00 feet, in all an arc distance of 8.86 feet to an iron pin set;

3. South 50 degrees 00 minutes 18 seconds East, a distance of 56.90 feet to an iron pin set being in the northwest right-of-way line of Baker Avenue, said northwest right-of-way line varies in width from its centerline; thence with said northwest right-of-way line for the following six calls:

1. in a curve to the right being subtended by a chord of South 58 degrees 13 minutes 22 seconds West, a chord distance of 24.95 feet and having a radius of 20.00 feet, in all an arc distance of 26.94 feet to an iron pin set;

2. in a curve to the left being subtended by a chord of South 48 degrees 37 minutes 28 seconds West, a chord distance of 59.63 feet and having a radius of 40.00 feet, in all an arc distance of 67.29 feet to an iron pin set;

3. in a curve to the right being subtended by a chord of South 24 degrees 31 minutes 46 seconds West, a chord distance of 16.33 feet and having a radius of 20.00 feet, in all an arc distance of 16.82 feet to a 1-1/2-inch magnetic nail set with disk PLS 2813;

4. South 48 degrees 37 minutes 28 seconds West, a distance of 573.90 feet to a 1-1/2-inch magnetic nail set with disk PLS 2813;

5. in a curve to the right being subtended by a chord of North 86 degrees 12 minutes 58 seconds West, a chord distance of 56.73 feet and having a radius of 40.00 feet, in all an arc distance of 63.05 feet to an iron pin set;

6. North 41 degrees 03 minutes 24 seconds West, a distance of 79.78 feet to a 1-1/2-inch magnetic nail set with disk PLS 2813 being a corner of said City of Owensboro Housing Authority property; thence with a southeast line of said City of Owensboro Housing Authority property North 48 degrees 37 minutes 28 seconds East, a distance of 687.22 feet to the point of beginning and containing 1.904 acres as shown on a Plat of a physical survey conducted under the direction of J. William Weikel, Jr., KY PLS no. 2813, of Bryant Engineering, Inc., on January 20, 2020 and shown of record in said clerk's office in Plat Book 49, at Page 31. The property described herein above is subject to all legal easements and rights-of-way that may or may not be of record.

**2.289 acres:**

A certain tract of land being located at 2136 Baker Avenue in Owensboro, Daviess County, Kentucky and being more particularly described as follows:

Unless stated otherwise any monument referred to herein as an "iron pin set" is a 5/8-inch steel reinforcement bar, eighteen (18) inches in length, with a plastic cap embossed "J.W. Weikel, KY PS 2813".

Beginning at an iron pin set being in the southwest right-of-way line of Leitchfield Road, said southwest right-of-way line being 30.00 feet from its centerline and being the northernmost corner of the Donald R. and Iris M. Brown property, as recorded in Deed Book 669, at Page 821 in the office of the Daviess County Clerk; thence with the northwest line of said Brown property South 48 degrees 42 minutes 34 seconds West, passing through the northernmost corner of the following properties Donald R. and Iris M. Brown, as recorded Deed Book 753, at Page 206, Shirley Lee, as recorded in Deed Book 610, at Page 805, Donald R. and Iris M. Brown, as recorded in Deed Book 693, at Page 884, Wendell E. Marsh, Sr., as recorded Deed Book 551, at Page 863 all in said clerk's office, then continuing on the same course with the northwest line of each, in all a total distance of 865.54 feet to an iron pin set being a corner of the City of Owensboro Housing Authority property, as shown on the Property Valuation Maps for Daviess County, Kentucky as Parcel 3-05-04-11; thence with a south/north line of said City of Owensboro Housing Authority property North 19 degrees 09 minutes 21 seconds West, a distance of 197.58 feet to an iron pin set being in the southeast right-of-way line of Baker Avenue, said southeast right-of-way line varies in width from its centerline; thence with said southeast right-of-way line of the following five (5) calls:

1. in a curve to the left being subtended by a chord of North 87 degrees 39 minutes 30 seconds East, a chord distance of 100.77 feet and having a radius of 80.00 feet, in all an arc distance of 109.00 feet to an iron pin set;

2. North 48 degrees 37 minutes 28 seconds East, a distance of 573.90 feet to an iron pin set;

3. in a curve to the right being subtended by a chord of North 72 degrees 43 minutes 09 seconds East, a chord distance of 16.33 feet and having a radius of 20.00 feet, in all an arc distance of 16.82 feet to an iron pin set;

4. in a curve to the left being subtended by a chord of North 48 degrees 37 minutes 28 seconds East, a chord distance of 59.63 feet and having a radius of 40.00 feet, in all an arc distance of 67.29 feet to an iron pin set;

5. in a curve to the right being subtended by a chord of North 55 degrees 57 minutes 13 seconds East, a chord distance of 32.97 feet and having a radius of 20.00 feet, in all an arc distance of 38.76 feet to an iron pin set being in said southwest right-of-way line; thence with said southwest right-of-way line in a curve to the left being subtended by a chord of South 57 degrees 19 minutes 55 seconds East, a chord distance of 114.26 feet and having a radius of 440.00 feet, in all an arc distance of 114.59 feet to the point of beginning and containing 2.289 acres as shown on a Plat of a physical survey conducted under the direction of J. William Weikel, Jr., KY PLS no. 2813, of Bryant Engineering, Inc., on January 20, 2020 and shown of record in said clerk's office in Plat Book 49, at Page 31. The property described herein above is subject to all legal easements and rights-of-way that may or may not be of record.

THE ABOVE-DESCRIBED PROPERTY was the subject of a property survey and is now more accurately described as follows:

Tract 1, containing 5.059 acres, as show on the Plat entitled "Housing Authority of Owensboro, KY, Property Survey, Located on 18<sup>th</sup> Street & Leitchfield Road, City of Owensboro, Daviess County, Kentucky," which Plat is of record in Plat Book 51, Page 8, in the Office of the Daviess County Clerk.

Tract 2, containing 1.749 acres, as show on the Plat entitled "Housing Authority of Owensboro, KY, Property Survey, Located on 18<sup>th</sup> Street & Leitchfield Road, City of Owensboro, Daviess County, Kentucky," which Plat is of record in Plat Book 51, Page 8, in the Office of the Daviess County Clerk.

Tract 3, containing 5.807 acres, as show on the Plat entitled "Housing Authority of Owensboro, KY, Property Survey, Located on 18<sup>th</sup> Street & Leitchfield Road, City of Owensboro, Daviess County, Kentucky," which Plat is of record in Plat Book 51, Page 8, in the Office of the Daviess County Clerk.

Tract 4, containing 3.376 acres, as show on the Plat entitled "Housing Authority of Owensboro, KY, Property Survey, Located on 18<sup>th</sup> Street & Leitchfield Road, City of Owensboro, Daviess County, Kentucky," which Plat is of record in Plat Book 51, Page 8, in the Office of the Daviess County Clerk.

Tract 5, containing 6.365 acres, as show on the Plat entitled "Housing Authority of Owensboro, KY, Property Survey, Located on 18<sup>th</sup> Street & Leitchfield Road, City of Owensboro, Daviess County, Kentucky," which Plat is of record in Plat Book 51, Page 8, in the Office of the Daviess County Clerk.

**SOURCE OF TITLE**

**AND BEING a part of the same property conveyed to the City of Owensboro Municipal Housing Commission, a/k/a Housing Authority of Owensboro by a Deed from Jessie G. Leibfried and Jacob Leibfried, her husband, dated February 21, 1951, of record in Deed Book 208, page 293, in the Office of the Daviess County Clerk**

**AND BEING a part of the same property conveyed to the City of Owensboro Municipal Housing Commission, a/k/a Housing Authority of Owensboro by a Deed from Fred L. Weir, individually and as Trustee under the assumed name of James C. Lusk Trustee, dated February 23, 1951, of record in Deed Book 208, page 316, in the Office of the Daviess County Clerk.**

**AND BEING a part of the same property conveyed to the City of Owensboro Municipal Housing Commission, a/k/a Housing Authority of Owensboro by a Quitclaim Deed from Settie Berry Moseley and Pierce Moseley, her husband, dated November 18, 1952, of record in Deed Book 223, page 328, in the Office of the Daviess County Clerk.**

**AND BEING a part of the same property conveyed to the City of Owensboro Municipal Housing Commission, a/k/a Housing Authority of Owensboro by a Deed from William Liebfried and Verna May Leibfried, husband and wife, Henry Leibfried and Marie Leibfried, husband and wife, dated April 4, 1951, of record in Deed Book 209, page 209, in the Office of the Daviess County Clerk.**